

**San Antonio International Airport**

**Airport Concession Disadvantage Business Enterprise Program (ACDBE)**  
**49 CFR Part 23**

**POLICY STATEMENT**

**Section 23.1, 23.23**

**Objectives/Policy Statement**

The San Antonio International Airport has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The San Antonio International Airport is a medium hub primary airport and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). It has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the San Antonio International Airport to ensure that ACDBEs as defined in Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also our policy:

1. To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
3. To ensure that our ACDBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs at our airport(s);
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at our airport(s); and
6. To provide appropriate flexibility to our airports in establishing and providing opportunities for ACDBEs.

Lisa Brice, Special Projects Manager, has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Ms. Brice is responsible for implementing all aspects of the ACDBE program. Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred by the San Antonio International Airport in its financial assistance agreements with the Department of Transportation.

The San Antonio International Airport has disseminated this policy statement to the City of San Antonio City Council, Airport Advisory Committee and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area by way of the City's public website and direct electronic mail.

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Frank Miller  
Aviation Director  
City of San Antonio

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Date

**Revised: August 31, 2011**

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 23.1 Objectives**

The objectives are found in the policy statement on the first page of this program.

### **Section 23.3 Definitions**

The San Antonio International Airport will use terms in this program that have the meaning defined in Section 23.3 and Part 26 Section 26.5 where applicable.

### **Section 23.5 Applicability**

The San Antonio International Airport is a medium hub primary airport and the sponsor of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

### **Section 23.9 Non-discrimination Requirements**

The San Antonio International Airport will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 23 on the basis of race, color, sex, or national origin.

In administering its DBE program, the San Antonio International Airport will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE program with respect to individuals of a particular race, color, sex, or national origin.

The San Antonio International Airport acknowledges these representations are also in accordance with obligations contained in its Civil Rights, DBE and ACDBE Airport grant assurances.

The San Antonio International Airport will include the following assurances in all concession agreements and management contracts it executes with any firm after April 21, 2005:

- (1) This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
- (2) The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

### **Section 23.11 Compliance and Enforcement**

The San Antonio International Airport will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101 and 26.105 through 26.107).

The San Antonio International Airport will comply with this part or be subject to formal enforcement action under §26.105 or appropriate program sanctions, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include actions consistent with 49 U.S.C. §§ 47106(d), 47111(d), and 47122.

The San Antonio International Airport compliance with all requirements of this part is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

Compliance reviews: The FAA may review the airport sponsor's compliance with this part at any time, including but not limited to, reviews of paperwork, on-site reviews, and review of the airport sponsor's monitoring and enforcement mechanism, as appropriate. The FAA Office of Civil Rights may initiate a compliance review based on complaints received.

Any person who knows of a violation of this part by the San Antonio International Airport may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

The following enforcement actions apply to firms participating in the San Antonio International Airport's ACDBE program:

- (a) For a firm that does not meet the eligibility criteria of subpart C of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department of Transportation (DOT) or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against you under 49 CFR Part 29.
- (b) For a firm that, in order to meet ACDBE goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart C of this part, DOT or FAA may initiate suspension or debarment proceedings against you under 49 CFR Part 29.
- (c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the FAA may consider the fact that a purported ACDBE has been certified. However, such certification does not preclude DOT from determining that the purported ACDBE, or another firm that has used or attempted to use it to meet ACDBE goals, should be suspended or debarred.
- (d) DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.
- (e) DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. §§ 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in the San Antonio International Airport's ACDBE program or otherwise violates applicable Federal statutes.

## **SUBPART B – ACDBE Programs**

### **Section 23.21 ACDBE Program Updates**

Since the San Antonio International Airport is a medium hub primary airport we are required to have an ACDBE program. As a condition of eligibility for FAA financial assistance, the San Antonio International Airport will submit its ACDBE program and overall goals to FAA according to the following schedule:

<b>Type of Airport</b>	<b>Initial Program and Goal Due</b>	<b>Second Goal Due</b>	<b>Subsequent Goals Due</b>
Large/Medium Hub Primary	January 1, 2006	October 1, 2008	Every 3 years on October 1

This ACDBE program will be implemented at the San Antonio International Airport.

When San Antonio International Airport makes significant changes to its ACDBE program, we will provide the amended program to the FAA for approval prior to implementing the changes.

### **Section 23.23 Administrative Provisions**

**Policy Statement:** The San Antonio International Airport is committed to operating its ACDBE program in a nondiscriminatory manner. The San Antonio International Airport's Policy Statement is elaborated on the first page of this program.

**ACDBE Liaison Officer (ACDBELO):** We have designated the following individual as our ACDBELO:

Lisa Brice, Special Projects Manager  
9800 Airport Blvd.  
San Antonio, TX 78216  
210-207-3505  
Lisa.Brice@sanantonio.gov

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the San Antonio International Airport complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the Director of the Aviation Department concerning ACDBE program matters. An organizational chart displaying the ACDBELO's position in the organization is found in Attachment 1 to this program.

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO has a staff of two to assist in the administration of the program. The duties and responsibilities include the following

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyzes San Antonio International Airport's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Director of Aviation on ACDBE matters and achievement.
9. Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance; acts as a liaison to the SCTRCA.
10. Plans and participates in ACDBE training seminars.
11. Acts as liaison to the Uniform Certification Program in Texas.
12. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
13. Maintains the San Antonio International Airport's updated directory on certified ACDBEs and distinguishes them from DBEs.

**Directory:** The San Antonio International Airport through the Texas Uniform Certification Program (TUCP) maintains a directory identifying all firms eligible to participate as ACDBEs. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE. The TUCP revises the Directory, at a minimum, on a

monthly basis. We make the Directory available by providing upon request the website to all interested parties. The Directory may be found in Attachment 2 to this program document.

### **Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs**

The San Antonio International Airport will take the following measures to ensure nondiscriminatory participation of ACDBEs in concession, and other covered activities. (23.25(a)).

(1) San Antonio International Airport will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE program with respect to individuals of a particular race, color, sex or national origin

(2) San Antonio International Airport will include the following assurances in all concession agreements and management contracts it executes with any firm after April 21, 2005:

(a) This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

(b) The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

(3) San Antonio International Airport will review the contract size, term and specifications and make such changes that will allow ACDBEs an equitable opportunity to compete for all concession opportunities that they can perform to the extent consistent with San Antonio International Airport's interest.

San Antonio International Airport will seek ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others. (23.25(c))

San Antonio International Airport's overall goal methodology for concessions, a description of the race-neutral measures it will take to meet the goals are described in Section 23.41 and Attachment 4 and 5 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

If the San Antonio International Airport projects that race-neutral measures, standing alone, are not sufficient to meet an overall goal, it will use race-conscious measures as described in Section 23.41 and Attachment 4 and 5 of this plan. (23.25(e))

San Antonio International Airport will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs. We will not use set-asides or quotas as a means of obtaining ACDBE participation. (23.25 (g))

### **Section 23.27 Reporting**

We will retain sufficient basic information about our ACDBE program implementation, ACDBE certification and the award and performance of agreements and contracts to enable the FAA to determine our compliance with Part 23. This data will be retained for a minimum of 3 years following the end of the concession agreement or other covered contract.

Beginning March 1, 2006 we will submit to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the form in Appendix A of Part 23.

## **Section 23.29 Compliance and Enforcement Procedures**

San Antonio International Airport will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23.

1. San Antonio International Airport will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. San Antonio International Airport will consider similar action under our own legal authorities, including responsibility determinations in future contracts. San Antonio International Airport may impose contract remedies available under the contract and under federal, state and local law and regulations for non-compliance by a participant. Such remedies may include, but are not limited to termination of the contract in whole or in part.
3. San Antonio International Airport will also implement a monitoring and enforcement mechanism to ensure that work committed to ACDBEs at contract award is actually performed by the ACDBEs. This mechanism will provide for a running tally of actual ACDBE attainments (e.g., payment actually made to ACDBE firms), including a means of comparing these attainments to commitments. These mechanisms will include, but not be limited to, the following:
  - a. Review solicitation package documentation thoroughly, obtaining clarification, if necessary.
  - b. Review reports regarding ACDBE participation to ensure adherence to commitment as represented in agreements and as stipulated in this program.
  - c. Track gross revenues generated by ACDBEs and expenditures paid to DBEs as applicable through reports.
4. In our reports of ACDBE participation to FAA, we will show both commitments and attainments, as required by the DOT reporting form.

## **SUBPART C – CERTIFICATION AND ELIGIBILITY**

**Section 23.31** We will use the procedures and standards of Part 26, except as provided in 23.31, for certification of ACDBEs to participate in our concessions program and such standards are incorporated herein. We are a member of the Texas Unified Certification Program (TUCP) administered by the City of Austin, City of Houston, Corpus Christi Regional Transportation Authority, North Central Texas Regional Certification Agency, South Central Texas Regional Certification Agency (SCTRCA) and Texas Department of Transportation. The SCTRCA will make certification decisions on behalf of the San Antonio International Airport for ACDBEs, including cases challenging the eligibility of an ACDBE for certification. In cases where the San Antonio International Airport does not agree with SCTRCA's final recommendation of eligibility, the San Antonio International Airport has the option to request that the United States Department of Transportation (USDOT) review the Agency's decision.

The TUCP's directory of eligible DBEs will specify whether a firm is certified as a DBE for purposes of Part 26, and ACDBE for purposes of part 23, or both.

The SCTRCA will treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years do not exceed \$30 million. The size standard for banks and other financial institutions is \$275 million in assets, for car rental companies it is \$40 million, and for pay telephone companies the standard is 1,500 employees. (23.33) The personal net worth standard used in determining eligibility for purposes of part 23 is \$750,000.

San Antonio International Airport will presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. However, before the certifying entity certifies such a firm, the SCTRCA will ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in our concessions program. The SCTRCA is not obligated to certify a part 26 DBE as an ACDBE if the firm does not do work relevant to our concessions program. (23.37).

San Antonio International Airport recognizes that the provisions of part 26, sections 26.83(c) (2-6) do not apply to certifications for purposes of part 23. The SCTRCA will obtain resumes or work histories of the principal owners of the firm and personally interview these individuals. The SCTRCA will analyze the ownership of stock of the firm, if it is a corporation. The SCTRCA will analyze the bonding and financial capacity of the firm. The SCTRCA will determine the work history of the firm, including any concession contracts or other contracts it may have received. The SCTRCA will compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive. The SCTRCA will obtain a statement from the firm of the types of concessions it prefers to operate or the type of other contracts it prefers to perform. The SCTRCA will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b)).

We acknowledge that a prime contractor includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient. We recognize that the eligibility of Alaska Native Corporations (ANC) owned firms for purposes of part 23 is governed by part 26 section 26.73(h). (23.39(c)(d)).

The SCTRCA will use the certification standards of part 23 to determine the ACDBE eligibility of firms that provide goods and services to concessionaires. (23.39(i)).

In instances when the eligibility of a concessionaire is removed after the concessionaire has entered into a concession agreement because the firm exceeded the size standard or the owner has exceeded the PNW standard, and the firm in all other respects remains an eligible DBE, we may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. We will not count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification. (23.39(e)).

In instances when the eligibility of a concessionaire is removed after the concessionaire has entered into a concession agreement because the firm exceeded the size standard or the owner has exceeded the PNW standard, and the firm in all other respects remains an eligible DBE, San Antonio International Airport may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. San Antonio International Airport will not count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification. (23.39(e)).

The SCTRCA will use the Uniform Application Form found in appendix F to part 26 with additional instruction as stated in 23.39(g).

## **SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 23.41 Basic Overall Goal Requirement**

San Antonio International Airport will establish two separate overall ACDBE goals; one for car rentals and another for concessions other than car rentals. The overall goals will cover a three year period and the sponsor will review the goals annually to make sure the goal continues to fit the sponsor's circumstances. San Antonio International Airport will report any significant overall goal adjustments to the FAA.

The average annual concession revenues for car rentals over the preceding 3 years exceeds \$200,000, and San Antonio International Airport will submit an overall goal for car rentals. Likewise, the average

annual concession revenues for concessions other than car rentals over the preceding 3 years exceeded \$200,000, and San Antonio International Airport will also submit an overall goal for concessions other than car rentals. San Antonio International Airport understands that “revenue” means total revenue generated by concessions, not the fees received by the airport from concessionaires.

San Antonio International Airport’s overall goals will provide for participation by all certified ACDBEs and will not be subdivided into group-specific goals.

#### **Section 23.43 Consultation in Goal Setting**

San Antonio International Airport will consult with stakeholders before submitting the overall goals to the FAA. Stakeholders will include, but not be limited to, minority and women’s chambers, community organizations, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and San Antonio International Airport’s efforts to increase participation of ACDBEs.

In its submission of its overall goals, San Antonio International Airport will identify the stakeholders that it consulted with and provide a summary of the information obtained from the stakeholders.

#### **Section 23.45 Overall Goals**

The San Antonio International Airport is a medium hub primary airport. As a condition of eligibility for FAA financial assistance, it will submit its overall goals according to the following schedule:

Type of Airport	Initial Goal Due	Second Goal Due	Subsequent Goals Due
Large/Medium Hub Primary	January 1, 2006	October 1, 2008	Every 3 years on October 1

If a new concession opportunity arises at a time that falls between the normal submission dates above and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the San Antonio International Airport will submit an appropriate adjustment to our overall goal to FAA for approval at least six months before executing the new concession agreement.

The San Antonio International Airport will establish overall goals in accordance with the 2-Step process as specified in section 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBEs in the market area, “base figure”. The second step is to examine all relevant evidence reasonably available in San Antonio International Airport’s jurisdiction to determine if an adjustment to the Step 1 “base figure” is necessary so that the goal reflects as accurately as possible the ACDBE participation San Antonio International Airport would expect in the absence of discrimination. Evidence may include, but is not limited to past participation by ACDBEs, a disparity study, evidence from related fields that affect ACDBE opportunities to form, grow and compete (such as statistical disparities in ability to get required financing, bonding, insurance; or data on employment, self-employment, education, training and union apprenticeship).

A description of the methodology to calculate the overall goal for car rentals, the goal calculations, and the data we relied on can be found in Attachment 5 to this program.

A description of the methodology to calculate the overall goal for concessions other than car rentals, the goal calculations, and the data we relied on can be found in Attachment 4 to this program.

#### **Projection of Estimated Race-Neutral & Race-Conscious Participation (23.45(f), 23.25(d-e))**

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodology in Attachments 4 and 5 to this program. This section of the program will be reviewed annually when the goal calculation is reviewed under 23.41(c).



### **Concession Specific Goals (23.25 (e)(1)(iv))**

San Antonio International Airport will use concession specific goals to meet any portion of the overall goals that it does not project being able to meet using race-neutral means. Concession specific goals are established so that, over the period to which the overall goals apply, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

San Antonio International Airport will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. We will require businesses subject to ACDBE goals at San Antonio International Airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs (23.25 (f)). Car rental firms are not required to change their corporate structure to provide for direct ownership arrangements.

San Antonio International Airport need not establish a concession specific goal on every such concession, and the size of concession specific goals will be adapted to the circumstances of each such concession (e.g., type and location of concession, availability of ACDBEs.)

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, San Antonio International Airport will calculate the goal as a percentage of the total estimated annual gross receipts from the concession. (23.25(e)(1)(i))

If the concession specific goal applies to purchases and/or leases of goods and services, San Antonio International Airport will calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire. (23.25(e)(1)(ii))

### **Good Faith Efforts on Concession Specific Goals (23.25(e)(1)(iii), (iv))**

To be eligible to be awarded a concession that has a concession specific goal; competitors must make good faith efforts to meet the goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so. (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Sections 26.51 and 26.53, regarding contract goals apply to San Antonio International Airport's concession specific goals. Specifically,

#### Demonstration of good faith efforts (26.53(a) & (c))

The ACDBELO is responsible for determining whether a concessionaire who has not met the concession specific goal has documented sufficient good faith efforts to be regarded as responsible.

San Antonio International Airport will ensure that all information is complete and accurate and adequately documents the competitors' good faith efforts before it commits to the concession agreement with the competitor.

#### Information to be submitted (26.53(b))

San Antonio International Airport treats competitor's compliance with good faith efforts' requirements as a matter of responsibility.

Each solicitation for which a concession specific goal has been established will require the concessionaires to submit the following information:

1. The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
2. A description of the work that each ACDBE will perform;
3. The dollar amount of the participation of each ACDBE firm/supplier participating;
4. Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 3 days of being informed by San Antonio International Airport that it is not responsible because it has not documented sufficient good faith efforts, a concessionaire may request administrative reconsideration. Concessionaire should make this request in writing to the following reconsideration official:

Frank Miller  
Frank.Miller@SanAntonio.gov  
San Antonio International Airport  
Director of Aviation  
9800 Airport Blvd.  
San Antonio, TX 78216  
210 207-3500 fax

The reconsideration official will not have played any role in the original determination that the concessionaire did not document sufficient good faith efforts.

As part of this reconsideration, the concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The concessionaire will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the concessionaire a written decision on reconsideration, explaining the basis for finding that the concessionaire did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when an ACDBE is replaced on a concession (26.53(f))

San Antonio International Airport will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE, to the extent needed to meet the concession specific goal. We will require the concessionaire to notify the ACDBE Liaison Officer immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation before the ACDBE is terminated or replaced.

In this situation, San Antonio International Airport will require the concessionaire to obtain our prior approval of the substitute ACDBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. The concessionaire must include the specific reasons for the termination and/or failure to complete its agreement as set forth above. The concessionaire must also provide the ACDBE with any and all documents and information as may be requested with respect to the termination or substitution of the ACDBE.

If the concessionaire fails or refuses to comply in the time specified, San Antonio International Airport's contracting office will work with the concessionaire and Concession Manager on compliance until satisfactory action has been taken. If the concessionaire still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Proposal/Bid Specification:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the San Antonio International Airport to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of \_\_\_\_ percent of *(annual gross receipts; value of leases and/or purchases of goods and services)* has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 6), to meet the concession specific goal for ACDBE participation in the performance of this concession.

The concession firm will be required to submit the following information: (1) the names and addresses of ACDBE firms and suppliers that will participate in the concession, (2) A description of the work that each ACDBE will perform; (3) The dollar amount of the participation of each ACDBE firm participating; (4) Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment; and (6) If the contract goal is not met, evidence of good faith efforts.

**Section 23.53 Counting ACDBE Participation for Car Rental Goals**

San Antonio International Airport will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR 23.53.

**Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals**

San Antonio International Airport will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR 23.55.

**Section 23.61 Quotas or Set-asides**

San Antonio International Airport does not use quotas or set-asides in any way in the administration of this ACDBE program.

**SUBPART E – OTHER PROVISIONS**

**Section 23.71 Existing Agreements**

San Antonio International Airport will assess potential for ACDBE participation when an extension or option to renew an existing agreement is exercised, or when a material amendment is made. It will use any means authorized by part 23 to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

**Section 23.73 Privately-Owned or leased Terminal Buildings**

***(This section is not applicable to San Antonio International Airport at this time)***

**Section 23.75 Long-Term Exclusive Agreements**

San Antonio International Airport will not enter into a long-term exclusive agreement for concessions without prior approval of the FAA Regional Civil Rights Office. It understands that a “long-term” agreement is one having a term of longer than 5 years. It also understands that an “exclusive” agreement is one in which an entire category of a particular business opportunity is limited to a single business entity. If special, local circumstances exist that make it important to enter into a long-term and exclusive agreement, San Antonio International Airport will submit detailed information to the FAA Regional Civil Rights Office for review and approval.

**Section 23.79 Geographic Preferences**

San Antonio International Airport will not use a “local geographic preference”, i.e., any requirement that gives an ACDBE located in one place (e.g., *your local area*) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at SAT Airport.

**ATTACHMENTS**

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-Neutral & Race- Conscious Participation
Attachment 5	Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race- Conscious Participation
Attachment 6	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 7	Certification Application Forms
Attachment 8	Regulations: 49 CFR Part 23

### **Attachment 3**

#### **Monitoring and Enforcement Mechanisms**

San Antonio International Airport has available several remedies to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract
2. Other actions deemed appropriated including responsibility reviews on future concession award opportunities
  - a. In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the ACDBE program, including, but not limited to the remedies of 49 CFR 23, Section 23.11.

San Antonio International Airport will implement various mechanisms to monitor program participants to ensure they comply with Part 23, including, but not limited to the following:

1. San Antonio International Airport will insert the provisions listed in 49 CFR 23, Section 23.9 into concessions agreements and management contracts.
2. San Antonio International Airport will implement the following additional monitoring and compliance procedures:
  - a. Concessionaires or contractors will be required to submit monthly gross revenue earned by ACDBEs and expenditures to DBEs.
  - b. Concessionaires or contractors will be required to submit, for review and approval, a written notification of any material change in the duties, functions and responsibilities of ACDBEs and DBEs prior to implementing the change.
  - c. Concessionaires or contractors will be required to list the specific duties, functions and responsibilities that ACDBEs or DBEs will perform.
  - d. San Antonio International Airport will perform periodic reviews, including site visits, each year on a representative number of judgmentally selected concessionaires and contractors to confirm ACDBEs and DBEs are performing listed duties, functions and responsibilities.
3. San Antonio International Airport will implement our compliance and monitoring procedures as follows:
  - a. San Antonio International Airport will utilize compliance software to capture monthly gross revenues of concessionaires, including ACDBEs and monitor progress of concessionaire commitments to ACDBEs versus actual participation.
  - b. San Antonio International Airport will require that concessionaires submit written confirmation, annually, that there are no changes in duties, functions and responsibilities of ACDBEs, including terms and conditions of joint venture agreements.
  - c. San Antonio International Airport will use appropriate personnel to perform reviews of ACDBEs to ensure that their activities correspond to the previously submitted list of duties, functions and responsibilities.
  - d. San Antonio International Airport will request from concessionaires any expenditures made with ACDBEs or DBEs in performing services and supplying goods. Those expenditures will be reported quarterly to San Antonio International Airport.

## **Attachment 4**

### **Section 23.45: Overall Goal Calculation for Concessions Other Than Car Rentals**

#### **Amount of Goal**

San Antonio International Airport's overall goal for concessions other than car rental during the period beginning October 1, 2011 and ending September 30, 2014 is the following: **25%** of the total gross receipts for concessions at San Antonio International Airport. The following are not included in the total gross receipts for concessions: (a) the gross receipts of car rental operations, (b) the dollar amount of a management contract or subcontract with a non-ACDBE, (c) the gross receipts of business activities to which a management contract or subcontract with a non-ACDBE pertains, and (d) any portion of a firm's estimated gross receipts that will not be generated from a concession.

If a new concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, San Antonio International Airport will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least 6 months before executing the new concession agreement. (23.45(i)).

San Antonio International Airport has determined that its market area is the State of Texas. This is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues are located.

#### **Methodology used to Calculate Overall Goal**

##### **Goods and Services**

We can meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses conducted at the airport. We, and the businesses at the airport, shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises. The dollar value from purchases of goods and services from ACDBEs may be added to the numerator, and the dollar value from purchases of goods and services from all firms (ACDBEs and non-ACDBEs) may be added to the denominator.

##### **Management Contract or Subcontract:**

We can meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. We, and the businesses at the airport, will add the dollar amount of a management contract or subcontract with an ACDBE to the total participation by ACDBEs in airport concessions (both the numerator AND the denominator) and to the base from which the airport's percentage goal is calculated. However, the dollar amount of a management contract or subcontract with a non-ACDBE and the gross revenue of business activities to which the management contract or subcontract pertains will not be added to this base in either the numerator or denominator. While we realize that this appears to go against the normal rules and rationale for goal-setting, we understand that this method is nevertheless required by statute.

**Step 1: 23.51(c)**

We determined the base figure for the relative availability of ACDBEs other than car rentals. The base figure was calculated as follows:

Option 1:

$$\text{Base figure} = \frac{\text{Ready, willing, and able non-car rental ACDBEs in the market area}}{\text{All ready, willing and able non-car rental concession firms in the market area}}$$

$$\text{Base figure: } \frac{121}{536}$$

The data source or demonstrable evidence used to derive the numerator was an active participant list as outlined in 23.51(c)(2). The active participant list represents the number of firms that have participated or attempted to participate in San Antonio International Airport's concession program in the last three previous years. It also represents the number of firms which have proactively sought inclusion on bidder's list and registered in the City's Centralized Vendor Registry. During the solicitation for concessions for the newly-constructed Terminal B, which opened in FY 2011, there were many firms which expressed an interest in becoming concessionaires in Terminal B. Those firms were added to the active participant's lists. The Terminal D concessions solicitation process included three outreach events. The attendees from those events were also added to the active. In anticipation of new agreements for Terminal A, one outreach event has been held. Those firms in attendance were also added to the active participant list.

When we divided the numerator by the denominator we arrived at the base figure for our overall goal for non-car rental concessions of: 25%.

**Step 2: 23.51(d)**

After calculating a base figure of the relative availability of ACDBEs, we examined evidence to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by 2%. Our overall goal for non-car rental concessions is **25%**

<b>Anticipated Concession Opportunity</b>	<b>ready, willing, and able</b>	<b>all firms</b>	<b>% availability</b>
Food & Beverage	63	206	31%
News & Gifts	34	173	20%
Passenger Services	15	121	13%
Duty Free Shop	9	36	25%
<b>TOTALS</b>	<b>121</b>	<b>536</b>	<b>23%</b>

<b>Past participation</b>	<b>Goal</b>	<b>%Achieved</b>
2010	27.6%	25.7%

2009	27.6%	30.7%
2008	27.6%	27%

- |   |                      |
|---|----------------------|
| 1) Step 1 Goal (Average Availability – [68 / 322] | 23%                  |
| 2) Step 2 Adjustments (Median past Three Years)   | 27%                  |
| Total (Step 1 + Step 2)                           | 50%                  |
| 3) Step 2 Adjusted Final Goals (Average 50/2) =   | <b>25% Adj. goal</b> |

The data used to determine the adjustment to the base figure was past participation. We evaluated the current capacity of ACDBEs to perform work in our concessions program by measuring the volume of work ACDBEs have performed in the past three years. The median past participation was selected and added to the base goal. The result was divided by 2 to get the average participation. The average represents the adjusted goal. This option was used because it most accurately reflects the current circumstances and the potential for ACDBE participation.

### **Consultation with Stakeholders (23.43)**

San Antonio International Airport is currently and will continue to consult with the following stakeholders prior to October 1, 2011: minority and women's business groups, community organizations, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the San Antonio International Airport's efforts to increase participation of ACDBEs. Upon completion of these stakeholder meetings, a summary of the information from these stakeholders will be provided in a timely manner and any adjustments to the overall goal will be made.

### **Breakout of Estimated Race-Neutral & Race Conscious Participation** **Section 23.51**

San Antonio International Airport will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The San Antonio International Airport uses the following race-neutral measures to increase ACDBE participation. We understand that we will be expected to actually take these steps, and this is not merely a paper exercise.

1. Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;
2. Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;
3. When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;
4. Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;
5. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;
6. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and

We estimate that, in meeting our overall goal of 25%, we will obtain 3% from race-neutral participation and 22% through race-conscious measures. The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious ACDBE participation. The ACDBE participation for the fiscal years FY 2008– FY 2011 were reviewed and compared against respective goals. The overages/underages for each year were reviewed. The overages/underages for the three years were: FY 2008: -.06%, FY 2009: 3%, and FY 2010: -1.9%. A mean average of the three overages/underages was calculated and determined to be 3%. The median overage/underage of the three years reviewed was



considered the best alternative for a race-conscious/race-neutral calculation for the goal period of FY 2012 – FY 2014.

If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal:

1. We will establish concession-specific goals for particular concession opportunities.
2. Negotiate with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the concession.
3. With prior FAA approval, other methods that takes a competitor's ability to provide ACDBE participation into account in awarding a concession.

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

We will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals, respectively.

## **Attachment 5**

### **Section 23.45: Overall Goal Calculation for Car Rentals**

#### **Amount of Goal**

San Antonio International Airport's overall goal for car rentals during the period beginning October 1, 2011 and ending September 30, 2014 is the following: 13.65% of the total goods and services purchases of car rental operators at San Antonio International Airport.

*Car Rental Alternative: If all or most of your goal is likely to be met through vehicle or other goods and services purchases from ACDBE car rental companies, you may structure the goal in terms of goods and services purchases. You must calculate the goal by dividing the estimated dollar value of the purchases from ACDBEs by the total estimated dollar value of all such purchases by car rental companies. 23.51(c)(5)(ii).*

The goods and services opportunities anticipated during this goal period are in the areas of auto body and mechanical repair, accounting services, landscaping, office supplies, key making, and janitorial services with estimated car rental goods and services of \$23,666,074. This estimation is based on the average of the total car rental goods and services purchase for the previous 3 years. If a new car rental concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, San Antonio International Airport will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least 6 months before executing the new concession agreement. (23.45(i)).

The market area is normally defined by the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located, and the geographical area in which the substantial majority of concessions-related revenues are generated. However, the Airport is defining its market by the geographical area in which the substantial majority of expenditures are located, and the area where the substantial majority of expenditures are made. Based upon a list of current car rental concessionaires at the airport, the market area for car rental concessions at the Airport was determined to be nationwide. This market area was established based on the fact that car rental concession businesses at the Airport made purchases with vendors who are based in various states across the country. The car rental concessions all maintain local operations at the airport, but many expenditures are made with vendors and corporations that are based in other states.

#### **Methodology used to Calculate Overall Goal**

##### **Goods and Services**

We can meet the percentage goal by including the purchase from DBEs of goods and services used in businesses at the airport. The dollar value from purchases of goods and services from DBEs may be added to the numerator, and the dollar value from purchases of goods and services from all firms (DBEs and non-DBEs) may be added to the denominator.

##### **Step 1: 23.51(c)**

We determined the base figure for the relative availability goods and services purchased by car rental concessions. Because all or most of our goal is likely to be met through goods and services purchases from car rental companies, the goal is determined on that basis. The base figure was calculated by examining the opportunities for DBE participation and the relative availability of DBE firms in the market area. The base figure is 10%.

(See table on next page)

<b>Goods &amp; Services opportunity</b>	<b>NAICS</b>	<b>ready, willing, and able</b>	<b>all firms</b>	<b>% availability</b>
Auto repair	811111	10	390	3%
Body shop	811121	14	188	8%
Brake repair	811118	4	53	8%
Janitorial	561720	96	236	41%
Accounting	541211	19	312	6%
Landscaping	561730	92	337	28%
Auto glass	811122	2	37	6%
Office supplies	453210	15	58	26%
Key replacements	423710	10	39	26%
<b>TOTALS</b>		<b>262</b>	<b>1650</b>	<b>17%</b>

The data source or demonstrable evidence used to derive the numerator was the South Central Texas Regional Certification Agency. The data source or demonstrable evidence used to derive the denominator was the Census Bureau Data at [www.census.gov/epcd/cbp/view/cbpview.html](http://www.census.gov/epcd/cbp/view/cbpview.html).

When we divided the numerator by the denominator we arrived at the base figure for our overall goal for car rental concessions of 17%.

#### **Step 2: 23.51(d)**

After calculating a base figure, past participation of ACDBEs, was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by 4.65%. Our overall goal for car rental concessions is 13.65%.

The data used to determine the adjustment to the base figure was:

<b>Past participation</b>	<b>Total Goods and Services</b>	<b>Total to DBEs</b>	<b>%DBE</b>
2010	\$20,163,895	\$10,137,176	51%
2009	\$9,260,398	\$951,234	10.3%
2008	\$41,573,931	\$7,221,685	17.4%

The reason we chose to adjust our figure using this data was because the median percentage has historically been less than the availability, at 10.3%.

Total median = 10.3%

Adjusted goal = (17% + 10.3%) ÷ 2= **13.65%**

**Past participation** - The data used to determine the adjustment to the base figure was past goods and services participation. We evaluated the current capacity of ACDBEs to perform work in our concessions-car rental program by measuring the volume of work ACDBEs in the capacity of goods and services have performed in the past three years.

The reason we chose to adjust our figure using this data was because it most accurately reflects the current circumstances and the potential for DBE participation.

### **Consultation with Stakeholders (23.43)**

San Antonio International Airport is currently and will continue to consult with the following stakeholders before October 1, 2011: minority and women's business groups, community organizations, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the San Antonio International Airport's efforts to increase participation of DBEs. Upon completion of these stakeholder meetings, a summary of the information from these stakeholders will be provided in a timely manner.

### **Breakout of Estimated Race-Neutral & Race Conscious Participation** **Section 23.51**

San Antonio International Airport will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The San Antonio International Airport uses the following race-neutral means to increase ACDBE participation:

1. Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;
2. Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;
3. When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;
4. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process; and
5. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation.

We estimate that, in meeting our overall goal of 13.28%, we will obtain .37% from race-neutral participation and 9.14% through race-conscious measures.

We estimate that, in meeting our overall ACDBE Purchases of Goods and Services goal of 13.5%, we will obtain 3% from race-neutral participation and 22% through race-conscious measures. The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious ACDBE participation. The ACDBE participation for the fiscal years FY 2008– FY 2011 were reviewed and compared against respective goals. The overages/underages for each year were reviewed. The overages/underages for the three years were: FY 2008: -.2.3%, FY 2009: 5.9%, and FY 2010: -2.5%. A mean average of the three overages/underages was calculated and determined to be .37%. The median overage/underage of the three years reviewed was considered the best alternative for a race-conscious/race-neutral calculation for the goal period of FY 2012 – FY 2014.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious ACDBE participation:

1. Evidence of past participation
2. Census data on available firms
3. More stringent contract language requiring the submittal of goods and services reports.

If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal:

1. We will establish concession-specific goals for particular concession opportunities
2. Negotiate with potential concessionaires to include ACDBE participation through the purchases of goods and services.
3. With prior FAA approval, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

We will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals, respectively.